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Paper No. 21

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In re Application of
Trevor John Burke
Application No. 09/462,550
Filed: March 14, 2000
For: METHOD AND APPARATUS FOR
GENERATING A PROGRAMME

JUN 10 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition to Withdraw Holding of Abandonment filed February 19, 2004, pursuant to MPEP 711.03(c)(II) and 37 C.F.R. 1.181(a). No fee is required.

The petition is **DENIED**.

On September 15, 2003, a Notice of Allowance and Issue Fee Due was mailed in the subject application. A response from applicant was not received. On February 2, 2004, a Notice of Abandonment was mailed.

Petitioner alleges that the Notice of Allowance and Issue Fee Due mailed September 15, 2003 was not received. In the petition, the petitioner has provided a statement that the Letter was not received by the petitioner.

Pursuant to MPEP § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner states that the Notice of Allowance and Issue Fee Due was not received. However, it was also stated in the petition that Petitioner was not the attorney of record in the application at

the time the Notice of Allowance was mailed and that a power of attorney was not filed until after a conversation with Ms. Lewis in the Office of Publications on November 25, 2003. Petitioner has not complied with requirements (a- c) of MPEP §711.03(c) whereby the attorney of record, at the time of mailing the Notice of Allowance, would be required to provide the required statements and docket record evidence.

Petitioner is given **TWO MONTHS** from the date of this decision in which to supplement the petition by including the statements outlined above. Alternatively, Petitioner may petition under 37 CFR 1.137(b) to revive the application due to unintentional abandonment.



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